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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,164	10/28/2003	Daniel L. Krissell	RSW9-2003-0137US1 (7161-1)	7166
46320	7590	04/25/2005	EXAMINER	
CHRISTOPHER & WEISBERG, PA 200 E. LAS OLAS BLVD SUITE 2040 FT LAUDERDALE, FL 33301			KHUU, HIEN DIEU THI	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/695,164	KRISSELL, DANIEL L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cindy D. Khuu	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 11, 12, 15, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 5-6, 8-10, 13-14 and 16-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/28/03</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Drawing Objections***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **230** and **340**. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

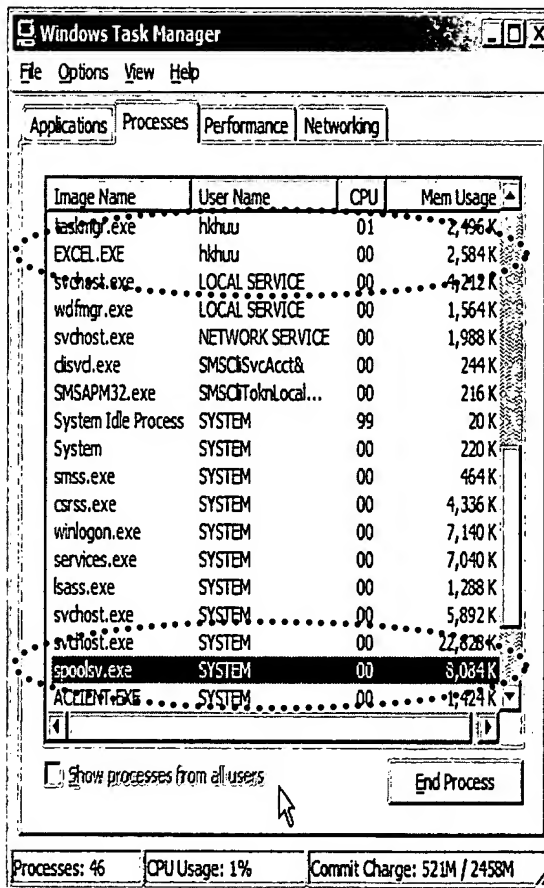
Claims 1, 3, 4, 7, 11, 12, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Windows XP In a Nutshell (Karp et al.)<sup>1</sup>.

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<sup>1</sup> The following figures are screen shots of operational use of Windows XP Professional.

Regarding claim 1, Windows XP discloses a system for adjusted monitoring in a relational environment comprising:

- a registry of related applications (**Figure 1a**);
- at least two performance monitors (**Figure 1a: Excel and Spoolsv**) communicatively linked to one another (**Figure 1a,b: CPU usage change**) and coupled to respective related applications listed in said registry (**Figure 1a**); and,
- a set of adjustable monitoring parameters for each of said at least two performance monitors (**Figure 2**).



Windows Task Manager

File Options View Help

Applications Processes Performance Networking

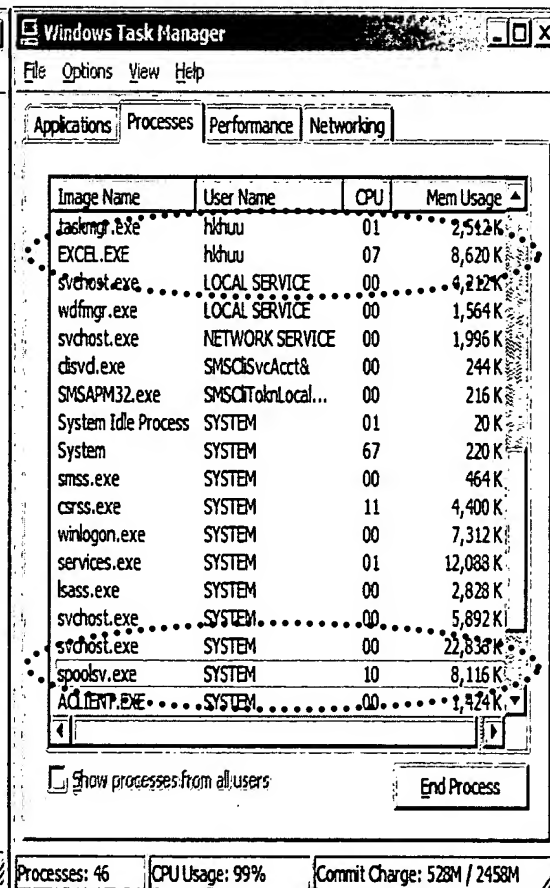
Image Name	User Name	CPU	Mem Usage
taskmgr.exe	hkhui	01	2,496 K
EXCEL.EXE	hkhui	00	2,584 K
svchost.exe	LOCAL SERVICE	00	4,212 K
wdfmgmt.exe	LOCAL SERVICE	00	1,564 K
svchost.exe	NETWORK SERVICE	00	1,988 K
disvd.exe	SMSOISvcAcct&	00	244 K
SMSAPM32.exe	SMSOITokenLocal...	00	216 K
System Idle Process	SYSTEM	99	20 K
System	SYSTEM	00	220 K
smss.exe	SYSTEM	00	464 K
csrss.exe	SYSTEM	00	4,336 K
winlogon.exe	SYSTEM	00	7,140 K
services.exe	SYSTEM	00	7,040 K
lsass.exe	SYSTEM	00	1,288 K
svchost.exe	SYSTEM	00	5,892 K
svchost.exe	SYSTEM	00	22,828 K
spoolsv.exe	SYSTEM	00	8,084 K
ACENTP.EXE	SYSTEM	00	1,424 K

☐ Show processes from all users

End Process

Processes: 46 CPU Usage: 1% Commit Charge: 521M / 2458M

Figure 1a



Windows Task Manager

File Options View Help

Applications Processes Performance Networking

Image Name	User Name	CPU	Mem Usage
taskmgr.exe	hkhui	01	2,512 K
EXCEL.EXE	hkhui	07	8,620 K
svchost.exe	LOCAL SERVICE	00	4,212 K
wdfmgmt.exe	LOCAL SERVICE	00	1,564 K
svchost.exe	NETWORK SERVICE	00	1,996 K
disvd.exe	SMSOISvcAcct&	00	244 K
SMSAPM32.exe	SMSOITokenLocal...	00	216 K
System Idle Process	SYSTEM	01	20 K
System	SYSTEM	67	220 K
smss.exe	SYSTEM	00	464 K
csrss.exe	SYSTEM	11	4,400 K
winlogon.exe	SYSTEM	00	7,312 K
services.exe	SYSTEM	01	12,088 K
lsass.exe	SYSTEM	00	2,828 K
svchost.exe	SYSTEM	00	5,892 K
svchost.exe	SYSTEM	00	22,836 K
spoolsv.exe	SYSTEM	10	8,116 K
ACENTP.EXE	SYSTEM	00	1,424 K

☐ Show processes from all users

End Process

Processes: 46 CPU Usage: 99% Commit Charge: 528M / 2458M

Figure 1b

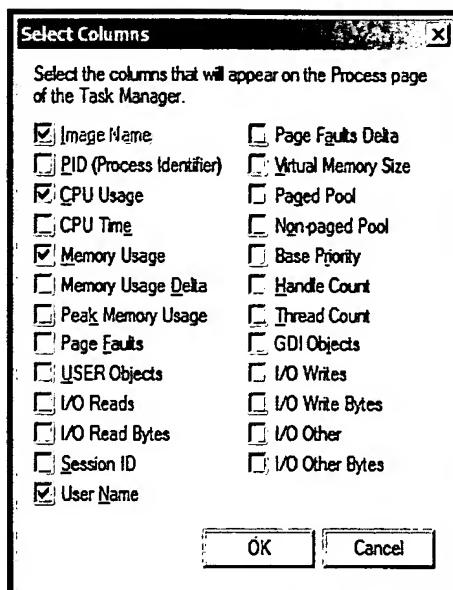


Figure 2

Regarding claims 3 and 11, Windows XP discloses a method and machine readable storage for adjusted monitoring in a relational environment, the method comprising the steps of:

- measuring resource values in a coupled application (**Figure 3: Performance**);
- detecting an indication arising from said measurement (**Figure 3: CPU Usage**);
- locating an application related to said coupled application (**Figure 4**); and,
- transmitting a notification of said indication to a performance monitor coupled to said related application (**Figure 1a: CPU**).

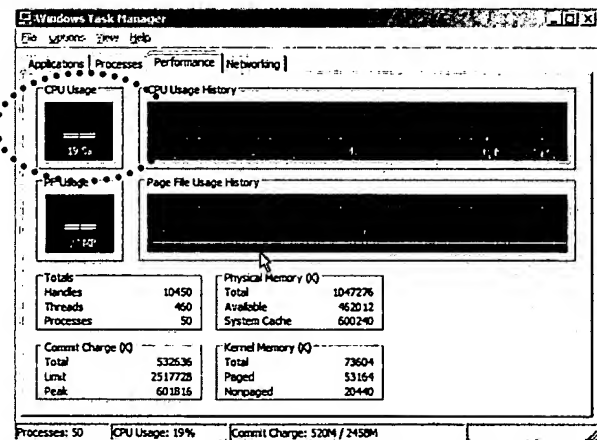


Figure 3

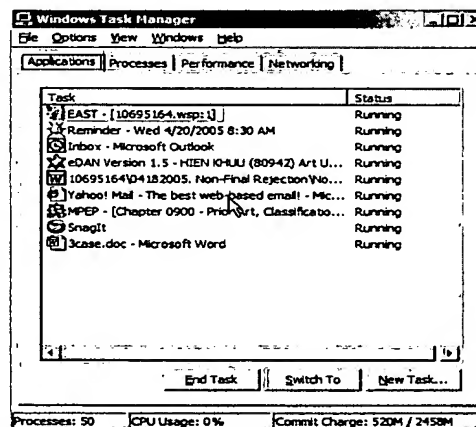


Figure 4

Regarding claims 4 and 12, Windows XP discloses a method and machine readable storage, comprising the steps of:  
receiving a notification of an indication from another performance monitor; and,  
processing said received notification in association with said coupled application  
**(Figure 1a,b: Excel and Spoolsv relationship).**

Regarding claims 7 and 15, Windows XP discloses a method and machine readable storage, wherein said locating step comprises the step of querying a registry of related applications **(Figure 1a: Image Name parameter represent a list of related applications in a registry).**

Regarding claim 19, Windows XP discloses a performance monitor comprising a communicative coupling to each of a monitored application **(Figure 1a: Windows Task Manager)**, a registry of related applications **(Figure 1a: Image Name parameter represent a list of related applications in a registry)**, and at least one other performance monitor coupled to a related application **(Figure 1b: Spoolsv coupled to Excel).**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows XP Version 2002 in view of Romero (US-20050022185).

Windows XP discloses all the claimed limitations as discussed above.

However, Windows XP does not explicitly disclose the following claimed features:

Regarding claim 2, a system comprising a policy engine coupled to at least one of said performance monitors and configured to process a policy for defining an adjustment of a corresponding set of said adjustable monitoring parameters based upon an indication received from a communicatively linked one of said at least two performance monitors.

Regarding claim 20, a performance monitor comprising:

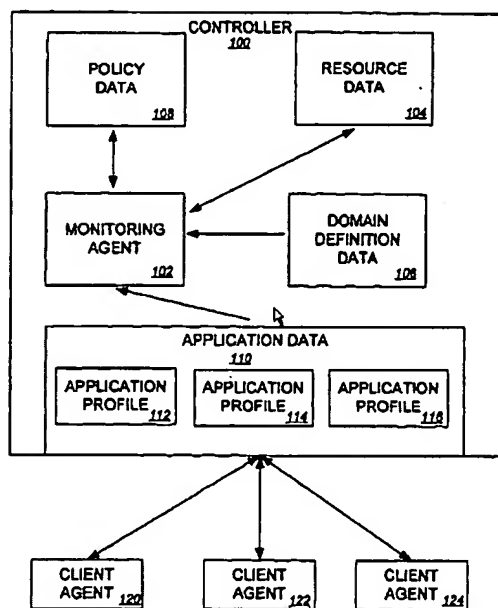
- a set of adjustable performance monitoring parameters; and,
- a policy specifying limitations on adjusting said performance monitoring parameters responsive to detecting an indication arising from one of said monitored application and said related application.

Nevertheless, Romero discloses the following:

Regarding claim 2, a system comprising a policy engine (100) coupled to at least one of said performance monitors (102) and configured to process a policy (108) for defining an adjustment of a corresponding set of said adjustable monitoring parameters based upon an indication received from a communicatively linked one of said at least two performance monitors (**Page 2: Paragraph 26**).

Regarding claim 20, a performance monitor comprising (102):

- a set of adjustable performance monitoring parameters; and,
- a policy (108) specifying limitations on adjusting said performance monitoring parameters responsive to detecting an indication arising from one of said monitored application and said related application.



Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Windows XP with a policy and a policy engine as disclosed by Romero for the purpose of allowing the system user the ability and flexibility to configure the system to behave at an optimal level based on a current condition of the system.

### ***Allowable Subject Matter***

Claims 5-6, 8-10, 13-14, and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Prior art fail to teach:



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Regarding claims 5 and 13, a method and machine readable storage, wherein said detecting step comprises the steps of:  
comparing said measured resource values to a pre-defined threshold; and, where said measured resource values exceed said threshold, declaring an indication.

Regarding claims 6 and 14, a method and machine readable storage, wherein said detecting step comprises the steps of:  
comparing said measured resource values to a pre-defined threshold; and,  
where said measured resource values fail to meet said threshold, declaring an indication.

Regarding claims 8 and 16, a method and machine readable storage, comprising the steps of:

- detecting said related application through a configuration of said coupled application; and,
- recording said detected relationship in said registry.

Regarding claims 9 and 17, a method and machine readable storage, comprising the step of adjusting performance monitor parameters responsive to said detection.

Regarding claims 10 and 18, a method and machine readable storage, wherein said adjusting step comprises the steps of:

- loading an adjustment policy specifying limitations on adjusting performance monitor parameters in response to specific indications; and,
- limiting said adjustment of said performance monitor parameters based upon said policy.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany

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the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following is cited to further show the state of art with respect to fluid flow control in parallel paths:


U.S. Patent No. 6,792,392 to Knight teaches of performance monitoring system; U.S. Pub. No. 2003/0023774 to Gladstone et al. teach application and reference monitor; U.S. Patent No. 6,801,940 to Moran et al. teach of application performance monitoring; U.S. Pub. No. 2004/0205167 to Grumann teach of application performance management tools.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy D. Khuu whose telephone number is (571) 272-8585. The examiner can normally be reached on M-F, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHL 4/21/05

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800